

Application No. 10/538,531
Filed: November 30, 2005
TC Art Unit: 1645
Confirmation No.: 4249

REMARKS

Claims 1-16 were pending in the case prior to entry of this amendment. Claims 2, 7, 8, 11, and 14-16 are canceled herein, and claims 5, 10, and 12-13 are withdrawn. Claims 1, 3-6, 10, and 12 have been amended herein. Upon entry of these amendments, claims 1, 3-6, 9-10, and 12-13 will be pending.

Claim Amendments

Claims 1, 10, and 12 have been amended to specify that the preparation of *Rhodospirillum* spp. and/or *Phaeospirillum* spp. is an isolated membrane fraction. Support is found in the specification at least at page 7, line 29, through page 8, line 1, which states as follows:

A preparation of *Rhodospirillum* spp. and/or *Phaeospirillum* spp. may, according to some embodiments of the present invention, comprise a cellular extract, or a component with cholesterol-lowering properties isolated from cells, or a concentrate of whole cells, or a concentrate of broken cell fragments. Such a preparation may preferably comprise the membrane fraction.

Restriction Requirement

In response to the Office Action dated December 12, 2007, and the requirement for restriction, Applicants hereby elect claims 1-4, 6-9, and 14 of Group I. The election is made without traverse. This confirms the election made during a telephone call

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with the Examiner on November 27, 2007. Further, Applicants request rejoinder of withdrawn claims 5, 10, and 12-13, which are method claims reciting all the limitations of product claims that are believed to be allowable.

Objection to Drawings

The drawings have been objected to because of the use of non-English language. The drawings have been corrected to use English expressions, and replacement sheets for Figures 1 - 13 (13 sheets) are attached.

Rejection Under 35 U.S.C. 101

Claims 1-2, 4, 6-9, and 14 are rejected as allegedly lacking utility because the claims allegedly are drawn to a product of nature. The rejection is respectfully traversed.

The claims as amended recite an isolated membrane fraction, and therefore "reflect the hand of man" and are not drawn to a product of nature. The withdrawal of this rejection is respectfully requested.

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Rejections Under 35 U.S.C. 102(b)

Claims 1-4, 6-9, and 14 are rejected as allegedly anticipated by Kobayashi et al., JP 08-205819. The rejection is respectfully traversed.

Kobayashi does not teach or suggest a preparation comprising an isolated membrane fraction of *Rhodospirillum* spp. and/or *Phaeospirillum* spp. as required by the present claims. Therefore, Kobayashi fails to anticipate the claims. The withdrawal of this rejection is respectfully requested.

Claims 1-4, 6-9, and 14 are rejected as allegedly anticipated by Mengjun et al., CN 1274584. The rejection is respectfully traversed.

Mengjun does not teach or suggest a preparation comprising an isolated membrane fraction of *Rhodospirillum* spp. and/or *Phaeospirillum* spp. as required by the present claims. Therefore, Mengjun fails to anticipate the claims. The withdrawal of this rejection is respectfully requested.

Claims 1-4, 6-9, and 14 are rejected as allegedly anticipated by Wang et al., CN 11172653. The rejection is respectfully traversed.

Wang does not teach or suggest a preparation comprising an isolated membrane fraction of *Rhodospirillum* spp. and/or

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Phaeospirillum spp. as required by the present claims. Therefore, Wang fails to anticipate the claims. The withdrawal of this rejection is respectfully requested.

Claims 1, 2, 4, and 6-8 are rejected as allegedly anticipated by ATCC Bacteria and Bacteriophages catalog, 1996, p. 108, as evidenced by Imhoff et al. Imhoff allegedly provides evidence of the taxonomic reclassification of *Rhodospirillum molishianum* as *Phaeospirillum* spp. The rejection is respectfully traversed.

The ATCC catalog, as evidenced by Imhoff, does not teach or suggest a preparation comprising an isolated membrane fraction of *Rhodospirillum* spp. and/or *Phaeospirillum* spp. as required by the present claims. Therefore, the ATCC catalog, as evidenced by Imhoff, fails to anticipate the claims. The withdrawal of this rejection is respectfully requested.

Rejections Under 35 U.S.C. 103(a)

Claim 3 is rejected as allegedly obvious over the ATCC catalog, as evidenced by Imhoff, in view of Wang. The rejection is respectfully traversed.

The cited references, either singly or combined, fail to teach or suggest a preparation comprising an isolated membrane fraction of *Rhodospirillum* spp. and/or *Phaeospirillum* spp. as

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required by claim 3. Therefore, the references do not disclose every limitation of claim 3, and at least for this reason the cited references do not render the claim obvious. The withdrawal of this rejection is respectfully requested.

Claims 6, 7, 9, and 14 are rejected as allegedly obvious over the ATCC catalog, as evidenced by Imhoff, in view of Mengjun. The rejection is respectfully traversed.

The cited references, either singly or combined, fail to teach or suggest a preparation comprising an isolated membrane fraction of *Rhodospirillum* spp. and/or *Phaeospirillum* spp. as required by the present claims. Therefore, the references do not disclose every limitation of the claims, and at least for this reason the cited references do not render the claims obvious. The withdrawal of this rejection is respectfully requested.

Claims 1-4, 6-9, and 14 are rejected as allegedly obvious over Kobayashi in view of the ATCC catalog, as evidenced by Imhoff, and Wang. The rejection is respectfully traversed.

The cited references, either singly or combined, fail to teach or suggest a preparation comprising an isolated membrane fraction of *Rhodospirillum* spp. and/or *Phaeospirillum* spp. as required by the present claims. Therefore, the references do not disclose every limitation of the claims, and at least for this

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reason the cited references do not render the claims obvious. The withdrawal of this rejection is respectfully requested.

Claims 1-4, 6-9, and 14 are rejected as allegedly obvious over Mengjun in view of the ATCC catalog, as evidenced by Imhoff, and Wang. The rejection is respectfully traversed.

The cited references, either singly or combined, fail to teach or suggest a preparation comprising an isolated membrane fraction of *Rhodospirillum* spp. and/or *Phaeospirillum* spp. as required by the present claims. Therefore, the references do not disclose every limitation of the claims, and at least for this reason the cited references do not render the claims obvious. The withdrawal of this rejection is respectfully requested.

Claims 1-4, 6-9, and 14 are rejected as allegedly obvious over Wang in view of the ATCC catalog, as evidenced by Imhoff. The rejection is respectfully traversed.

The cited references, either singly or combined, fail to teach or suggest a preparation comprising an isolated membrane fraction of *Rhodospirillum* spp. and/or *Phaeospirillum* spp. as required by the present claims. Therefore, the references do not disclose every limitation of the claims, and at least for this reason the cited references do not render the claims obvious. The withdrawal of this rejection is respectfully requested.

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Reconsideration of the rejections and allowance of the pending claims is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney to discuss any matter that would expedite allowance of the present application.

Respectfully submitted,

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